

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES
CONSTRUCTION MATERIALS TESTING SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into by and between Fort Bend County, (hereinafter “County”), a body corporate and politic under the laws of the State of Texas, and Associated Testing Laboratories, Inc., (hereinafter “Consultant”), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, Consultant is professional engineering firm which provides construction materials testing services; and

WHEREAS, County desires that Consultant provide construction materials testing services concerning the project for the Fresno Boys & Girls Club (hereinafter “Services”); and

WHEREAS, County has determined Consultant is the most highly qualified provider of the desired Services on the basis of demonstrated competence and qualifications, and County and Consultant have negotiated to reach a fair and reasonable amount of compensation for the provision of such Services, as required under Chapter 2254 of the Texas Government Code; and

WHEREAS, Consultant represents that it is qualified and desires to perform such Services; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under Section 262.023 of the Texas Local Government Code because this Agreement is for professional engineering services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Scope of Services

Consultant shall render the construction materials testing services as described in Consultant’s proposal, dated June 6, 2024, attached hereto as Exhibit A, and incorporated herein for all purposes.

Section 2. Personnel

2.1 Consultant represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Consultant shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.

2.2 All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Consultant who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 3. Compensation and Payment

3.1 Consultant's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is Fifty-Five Thousand, Sixty-Five dollars and no/100 (\$55,065.00) as set forth in Exhibit A. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without a written agreement executed by the parties.

3.2 All performance of the Scope of Services by Consultant including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

3.3 County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff person designated by the County's Director of Facilities Management and Planning, one (1) electronic (pdf) copy of the invoice showing the amounts due for Services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 4. Limit of Appropriation

4.1 Consultant clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Fifty-Five Thousand, Sixty-Five dollars and no/100 (\$55,065.00) specifically allocated to fully discharge any and all liabilities County may incur.

4.2 Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay to Consultant shall not under any conditions, circumstances, or interpretations thereof exceed Fifty-Five Thousand, Sixty-Five dollars and no/100 (\$55,065.00).

Section 5. Time of Performance

Any Services to be performed by Consultant for County must be scheduled at least two weeks in advance with the County’s Facilities Management and Planning Department, or as mutually agreed by the parties. The County’s Facilities Management and Planning Department may be contacted between the hours of 8:00 a.m. and 5:00 p.m., excluding County holidays or other County closures, at (281) 238-3565 concerning the scheduling of any Services.

Section 6. Modifications and Waivers

6.1 The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.

6.2 No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.

6.3 The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 7. Termination

7.1 Termination for Convenience – County may terminate this Agreement at any time upon forty-eight (48) hours written notice.

7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 If Consultant fails to perform Services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;

7.2.1.2 If Consultant materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County’s reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

7.2.2 If, after termination, it is determined for any reason whatsoever that Consultant was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Consultant in accordance with Section 3, above, for those Services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Consultant’s

final invoice for said Services will be presented to and paid by County in the same manner set forth in Section 3 above.

7.4 If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Consultant.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Consultant as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Consultant shall promptly furnish all such data and material to County on request.

Section 9. Inspection of Books and Records

Consultant will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Consultant for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 10. Insurance

10.1 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (or a Claims Made form for Professional Liability insurance) from such companies having Best's rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

10.1.1 Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed.

10.1.2 Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

10.1.3 Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

10.1.4 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

10.1.5 Professional Liability insurance may be made on a Claims Made form with limits not less than \$1,000,000.

10.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All Liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

10.3 If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

10.4 Consultant shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.

10.5 No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.

10.6 Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of Consultant.

Section 11. Indemnity

CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY AGAINST LOSSES, LIABILITIES, CLAIMS, AND CAUSES OF ACTION, INCLUDING THE REIMBURSEMENT OF COUNTY'S REASONABLE ATTORNEYS FEES IN PROPORTION TO CONSULTANT'S LIABILITY, ARISING FROM ACTIVITIES OF CONSULTANT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, INTENTIONAL TORT, ERROR, OR OMISSION OF CONSULTANT OR ANY OF CONSULTANT'S AGENTS, SERVANTS OR EMPLOYEES.

Section 12. Confidential and Proprietary Information

12.1 Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Consultant or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the

Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

12.2 Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Consultant shall advise County immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Consultant will promptly turn over to County all documents, papers, and other matter in Consultant's possession which embody Confidential Information.

12.3 Consultant acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

12.4 Consultant in providing all Services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12.5 Consultant expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County

by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 13. Independent Consultant

13.1 In the performance of work or Services hereunder, Consultant shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.

13.2 Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 14. Notices

14.1 Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

14.2 Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Facilities Management and Planning Department
Attn: Director
301 Jackson Street, Suite 301
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

Consultant: Associated Testing Laboratories, Inc.
10450 Corporate Drive
Sugar Land, Texas 77478

14.3 A Notice is effective only if the party giving or making the Notice has complied with subsections 14.1 and 14.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

14.3.1 If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

14.3.2 If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 15. Compliance with Laws

Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Consultant shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 16. Standard of Care

Consultant represents shall perform the Services to be provided under this Agreement with the professional skill and care ordinarily provided by competent consultant practicing under the same or similar circumstances and professional license. Further, Consultant shall perform the Services as expeditiously as is prudent considering the ordinary professional skill and care of a competent consultant.

Section 17. Assignment

17.1 Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.

17.2 Neither party may delegate any performance under this Agreement.

17.3 Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 18. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to pay any and/or all attorney fees incurred by Consultant in any way associated with the Agreement. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted.

Section 19. Successors and Assigns

County and Consultant bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 20. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 21. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 22. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Consultant release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 23. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 24. Conflict

In the event there is a conflict between this Agreement and the attached exhibits, this Agreement controls.

Section 25. Certain State Law Requirements for Contracts

For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

25.1 Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

25.2 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott Israel and is authorized to agree in such

contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.

25.3 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

25.4 If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

Section 26. Human Trafficking

BY ACCEPTANCE OF AGREEMENT, CONSULTANT ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

(Execution Page Follows)

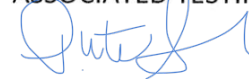
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IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the date signed by the last party hereto. ASSOCIATED TESTING LABORATORIES, INC

FORT BEND COUNTY

ASSOCIATED TESTING LABORATORIES, INC

KP George, County Judge



Authorized Agent – Signature

Date

Priti Singh

Authorized Agent- Printed Name

ATTEST:

CEO

Title

Laura Richard, County Clerk

7/18/2024

Date

REVIEWED:



Facilities Management and Planning
Department

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Ed Sturdivant, County Auditor

Exhibit A: Consultant's proposal, dated June 6, 2024

I:\AGREEMENTS\2024 Agreements\Purchasing\Facilities\Associated Testing Laboratory (24-Fac-100783)\Agreement - CMT.ATL.docx.7/2/2024. aw

EXHIBIT A

Mr. James Knight
Director of Facilities
Fort Bend County
Email: James.Knight@fortbendcountytexas.gov
Phone: (281) 238-3095

Subject: Proposal for Construction Materials Testing Services for Fresno Boys & Girls Club, S&C Project N032023, TDLR Project TABS2024011699

Mr. Knight:
In accordance with your request, we are pleased to submit this proposal to provide CMT Services.

Project Description

Our understanding of this project is to provide inspection and testing of the construction of the Boys and Girls Club located at 1031 W. Sycamore Rd., Fresno, TX, as outlined below.

Proposed Scope of Work

The following scope of field services will be carried out to verify conditions at the site of the proposed construction:

- Proof Roll observations for the building pad and on the new paving subgrade areas.
- Nuclear density tests will be performed on select fill, general fill, paving subgrade and utility backfill.
- Concrete testing will be completed for proposed spread footings, grade beams, drilled piers, building pad, parking area, columns, shear walls, dumpster pad, swimming pool and sidewalks.
- Structural Steel inspections will be completed for the required steel connections on the walls, ceiling structure and canopies.

Site Safety

Site safety is the responsibility of the contractor. Therefore, we will notify the contractor's site representative, and your Project Inspector if/as directed by you for this project, whenever we are on site. You will also need to assign someone to sign our Daily Field Reports (DFRs) whenever our technicians and/or inspectors are onsite. This should be established at or before our pre-construction meeting.

Budget Estimate and Assumptions

Based on the details provided at the time of this proposal, ATL has estimated a budget of **\$55,065.00**.

A detailed estimate is in the following table. **It should be noted that this proposal is only an estimate and that it may be impacted by unavoidable events like construction hours, delays from on-site safety meetings or orientations, permits, utility clearance, access issues, and weather-related issues.** No testing will be performed outside of the scope that has been provided without the approval from the client beforehand.

Description	Quantity	Rate	Units	Amount
PERSONNEL				
Admin/Clerical Support	17.00	\$50.00	Hour	\$850.00
CMT Project Manager	17.00	\$125.00	Hour	\$2,125.00
Certified Technician	260.00	\$90.00	Hour	\$23,400.00
Non-Certified Technician	100.00	\$65.00	Hour	\$6,500.00
CWI Inspector	16.00	\$95.00	Hour	\$1,520.00
Vehicle Charge	106.00	\$85.00	Trip	\$9,010.00
Subtotal:				\$43,405.00
SOIL TESTING				
OMD Standard Compaction	4.00	\$170.00	Each	\$680.00
Atterberg Limits	6.00	\$65.00	Each	\$390.00
% Passing #200	4.00	\$50.00	Each	\$200.00
OMD Lime or Cement Stabilized Soil	4.00	\$185.00	Each	\$740.00
CSS Compressive Strength	2.00	\$200.00	Set	\$400.00
4-Point Lime Content Recommendation	1.00	\$250.00	Each	\$250.00
Nuclear Density Gauge	40.00	\$55.00	Day	\$2,200.00
Subtotal:				\$4,860.00
CONCRETE				
Compressive Strength (Cylinder)	100.00	\$18.00	Each	\$1,800.00
Beam Test ASTM C-78, C-293)		\$27.00	Each	
Measuring Thickness of Concrete Cores	0.00	\$13.00	Each	\$0.00
Sample Pick Up	20.00	\$250.00	Trip	\$5,000.00
Subtotal:				\$6,800.00
Grand Total				\$55,065.00

**Minimum 4-hour charge per trip; Overtime will be charged 1.5 times to the regular rate (before and after 6am/pm and all day on weekends)*

Closure

Thank you for your consideration of Associated Testing Laboratories, Inc. We look forward to working with you on this project. Please contact us if you have any questions or require additional information.

Sincerely,
Associated Testing Laboratories, Inc.



Tiffany Price
Operations Manager

GENERAL CONDITIONS

1. LABORATORY will represent CLIENT in a professional manner, using proper skills and care normally associated with the type of project and geographical location of the PROJECT.
2. No warranty is intended or implied other than the LABORATORY will use all proper skills and care as detailed in section above
3. THE LABORATORY is not responsible for locating or identifying underground utilities. Although the LABORATORY will take all reasonable care to avoid damage or injury to subterranean structures or utilities, the CLIENT agrees to hold the LABORATORY harmless for any damages to subterranean structures, which are not called to LABORATORY'S attention and correctly shown on the plans furnished. The client further agrees to provide the right of entry to the LABORATORY and all necessary equipment required to complete the work. While the LABORATORY will take all reasonable precautions to minimize any damage to the property, it is understood by the client that in the normal course of work some damage may occur, the correction of which is not part of this agreement.

FEE PAYMENT:

1. Payment is due upon issuance of monthly invoice. LABORATORY reserves the right to withhold any letters and reports pending payment for services.

DISPUTE RESOLUTION:

The CLIENT agrees that any and all disputes, disagreements or claims between LABORATORY and the owner and all construction contractors and subcontractors or any other interested party on the project arising from LABORATORY'S professional acts, errors omissions or any other reasons will be resolved by Mandatory binding arbitration. The CLIENT further agrees to require of the contractor and his subcontractors and all interested party, an identical dispute resolution agreement for any and all disputes, disagreements or claims between the LABORATORY and the contractor, subcontractor or any other interested party arising from LABORATORY'S professional acts, errors, omissions, or any other reasons. the dispute resolution clause will be applicable to all successors or assigns.

LIMITATION OF LIABILITY:

The CLIENT agrees to limit LABORATORY'S liability to the owner and all construction contractors and sub-contractors on the project arising from LABORATORY'S professional acts, errors, or omissions, such that the total aggregate liability of LABORATORY to all those named shall not exceed LABORATORY'S total fee for the services rendered on this project. The CLIENT further agrees to require of the contractor and his subcontractors an identical limitation of LABORATORY'S liability for damages suffered by the contractor or subcontractor arising from LABORATORY'S professional acts, errors, or omissions. Neither the contractor nor the subcontractor assumes ant liability for damages to others, which may arise on account of LABORATORY'S professions acts, errors, or omissions.

EXTENT OF AGREEMENT:

This agreement, including these terms and conditions, represents the entire agreement between LABORATORY and CLIENT and supersedes any previous agreements, negotiations, or representations, whether oral or written. This agreement may be amended only in writing, signed by both LABORATORY and CLIENT

CONFIDENTIALITY:

Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide a writing indicating that such oral communication constitutes Confidential Information.

Exclusions from Confidential Information. Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

Obligations of Receiving Party. Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party. Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement. Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. The receiving Party shall return to the Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests, it in writing.

Time Periods. The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

Relationships. Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint ventures or employee of the other party for any purpose.

Severability. If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

Integration. This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

Waiver. The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

Initial _____